

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

HUGO GONZALEZ,)	
)	
Petitioner,)	
)	
vs.)	No. CIV-15-95-C
)	
THOMAS J. SCARANTINO, Warden)	
)	
Respondent.)	

ORDER ADOPTING REPORT AND RECOMMENDATION

Plaintiff filed the present action seeking an order *nunc pro tunc* modifying his federal sentence to run concurrently with a state sentence. Consistent with the provisions of 28 U.S.C. § 636(b)(1)(B), this matter was referred to United States Magistrate Judge Shon T. Erwin. Judge Erwin entered a Report and Recommendation (“R&R”) on January 11, 2016. Although the time to object has passed, Petitioner has not objected or sought additional time to object.

In the R&R, Judge Erwin sets out the substance of Petitioner’s claims and outlines the proper disposition of those claims. In summary, to the extent Petitioner raises claims of ineffective assistance of counsel and/or misapplication of the Sentencing Guidelines, he challenges the validity of his federal sentence. These claims must be brought pursuant to 28 U.S.C. § 2255 in the federal district where sentence was imposed. Accordingly, as recommended by Judge Erwin, these claims will be transferred to that court.

To the extent Petitioner challenges the calculation of time credits, his claims are properly brought pursuant to 28 U.S.C. § 2241. However, as Judge Erwin noted, Petitioner

has failed to exhaust these claims with the Federal Bureau of Prisons as required by Garza v. Davis, 596 F.3d 1198, 1203 (10th Cir. 2010). Therefore, those claims must be dismissed without prejudice.

Accordingly, the Court adopts, in its entirety, the Report and Recommendation of the Magistrate Judge (Dkt. No. 14). Petitioner's challenge to the calculation of his time credits is **DISMISSED** without prejudice. Petitioner's claims of ineffective assistance of counsel and misapplication of the Federal Sentencing Guidelines are **TRANSFERRED** to the United States District Court for the Eastern District of Texas. A separate judgment will issue.

IT IS SO ORDERED this 1st day of March, 2016.



ROBIN J. CAUTHRON
United States District Judge